



Billing Code: 3720-58

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

[COE-2016-0014]

United States Navy Danger Zone, East Pearl River, within the Acoustic Buffer Area of the John C. Stennis Space Center, and Adjacent to Lands, in Hancock County, Mississippi

AGENCY: U. S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers published a document in the Federal Register on December 14, 2016, proposing to revise its regulations to establish a danger zone in the East Pearl River within the acoustic buffer of NASA's John C. Stennis Space Center on the East Pearl River, in Hancock County, Mississippi. The Navy requested establishment of a danger zone on waterways and tributaries of the East Pearl River that are used by Naval Special Warfare units to conduct riverine training exercises. The purpose of the danger zone is to ensure public safety by restricting access within the danger zone during training events.

DATES: Effective date: [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: Headquarters, U.S. Army Corps of Engineers, Operations and Regulatory Community of Practice, 441 G Street, NW, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, D.C. at 202-761-4922 or by e-mail at david.b.olson@usace.army.mil or Ms. Kristi Hall, U.S. Army Corps of Engineers, Vicksburg District, Regulatory Branch, at 601-631-7529 or by email at kristi.w.hall@usace.army.mil.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities under Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is amending restricted area regulations at 33 CFR part 334 by adding §334.784 to establish a danger zone along the East Pearl River. The amendment to this regulation will allow the Commanding Officer of Naval Construction Battalion Center, Gulfport, Mississippi (or his/her designee) to restrict passage of persons, watercraft, and vessels in the waters within the danger zone during Department of Defense training for conducting coastal and riverine special operations in support of global military missions. This area is referred to as a danger zone due to the use of short-range training ammunition within riverine areas.

The proposed rule was published in the December 14, 2016 edition of the Federal Register (81 FR 90292) with the docket number COE–2016–0014 and one comment was received. The commenter requested additional information on frequency or likely frequency of the utilization of the danger zone and suggested the description of the danger zone implied some portion of the river would be open for boat traffic during training exercises. The training has been occurring within the proposed danger zone since 2004 and the formal establishment of the zone would not increase or decrease the frequency of training, change the type of training, or expand training. A vessel that needs

to transit the danger zone when it is activated may do so if the operator of the vessel obtains permission from the Commanding Officer, Naval Construction Battalion Center, Gulfport or his or her designees. Furthermore, the description of the danger zone has been modified to omit reference to “left descending bank” to avoid confusion.

On December 14, 2016, the Corps’ Vicksburg District issued a public notice soliciting comments on the proposed rule from all known interested parties and one comment was received. The commenter requested training be limited during posted hunting seasons. The establishment of the danger zone is for the purpose of public safety and to preserve current military training vital to ensuring combat ready forces, so training cannot be limited during posted hunting seasons.

Procedural Requirements

a. Regulatory Planning and Review.

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

The Corps has made a determination this rule is not a significant regulatory action. This regulatory action determination is based on the size, duration, and location of the danger zone. The danger zone occupies a small portion of the waterway and will only be activated during naval training exercises. A vessel that needs to transit the danger

zone when it is activated may do so if the operator of the vessel obtains permission from the Commanding Officer, Naval Construction Battalion Center, Gulfport or his or her designees.

b. Impact on Small Entities.

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Corps certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels that intend to transit the danger zone may be small entities, for the reasons stated in paragraph (a) above this rule would not have a significant economic impact on any vessel owner or operator. In addition, the danger zone is necessary to protect public safety during training exercises. Small entities can utilize navigable waters outside of the danger zone when the danger zone is activated. Small entities may also transit the danger zone when it is activated, as long as they obtain permission from the Commanding Officer, Naval Construction Battalion Center, Gulfport or his/her designees. After considering the economic impacts of this danger zone regulation on small entities, I certify that this action will not have a significant impact on a substantial number of small entities.

c. Review Under the National Environmental Policy Act.

An environmental assessment (EA) has been prepared. We have concluded that the establishment of the restricted area will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement is not required. The final EA and Finding of No Significant Impact may be reviewed at the District Office listed at the end of the FOR FURTHER INFORMATION CONTACT section, above.

d. Unfunded Mandates Reform Act.

This rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Public Laws 104-4, 109 Stat. 48, 2 U.S.C. 1501 et seq.). We have also found, under Section 203 of the Act, that small governments will not be significantly or uniquely affected by this rule.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons stated in the preamble, the Corps is amending 33 CFR part 334 as follows:

PART 334 – DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Add § 334.784 to read as follows:

§ 334.784 East Pearl River, within the acoustic buffer area of the John C. Stennis Space Center, and adjacent to lands, in Hancock County, Mississippi; danger zone.

(a) The area. A danger zone is established in and to the extent of waters of the United States, as defined in 33 CFR part 329, in the following reaches of the East Pearl River south of a point located at latitude 30.4030°N, longitude -89.6815°W, to a point below the confluence of Mikes River, located at latitude 30.3561°N, longitude -89.6514°W. The datum for these coordinates is NAD 1983.

(b) The regulation. (1) No person, vessel, or other watercraft, other than a vessel owned and operated by the United States, shall enter or remain in the danger zone, or within a portion or portions thereof, when closed to public access, as provided in paragraph (b)(2) of this section, except by permission of the Commanding Officer, Naval Construction Battalion Center, Gulfport or such other person(s) as he or she may designate.

(2) The danger zone, or a portion or portions thereof, will be closed, for riverine, weapons, or other dangerous naval training, by placement of Government picket boats at the northern and southern boundaries in the East Pearl River, or at such other location(s) within the danger zone as may be determined to be sufficient to protect the public. Prior to closure, picket boats will transit the area(s) to be closed, to ensure that no persons, vessels, or other watercraft are present. Once the danger zone, or location(s) within the danger zone, has been cleared, picket boats will remain in position, upstream and downstream, until it is safe to re-open the area(s) to public access.

(3) Riverine, weapons, and other dangerous naval training may occur on any day of the week, typically, but not exclusively, in periods of two to eight hours, between 6 a.m. and 6 p.m. Training may occur at night, in darkness.

(c) Enforcement. The restrictions on public access in this section shall be enforced by the Commanding Officer, Naval Construction Battalion Center, Gulfport or by such other person(s) as he or she may designate.

Dated: October 18, 2017.

APPROVED_____

Thomas P. Smith, P.E.

Chief, Operations and Regulatory Division

Directorate of Civil Works

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